Quid Novi

McGill University, Faculty of Law
Volume 26, no. 4 - October 4, 2005

HOW CAN IT BE TACTFULLY TOLD to a sensitive young wife?

Pubdocs *can help save your marriage*

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In This Issue...

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The *Quid Novi* is published weekly by the students of the Faculty of Law at McGill University. Production is made possible through the direct support of students.

Les opinions exprimées sont propres aux auteurs et ne reflètent pas nécessairement celles de l'équipe du *Quid Novi*.

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Contributions should preferably be submitted as a .doc attachment. All anonymous submissions will be rejected.

Editor's Note

I am constantly amazed by the power of sport. What is it about an open field, a group of people, and some equipment that can change people so much?

The recent furor over the alleged McGill football hazing incident has put the spotlight on the downside to sports. Or, perhaps more accurately,k the downside of what happens when groups of people get together to play sports. In the pumped-up atmosphere that surrounds sports and sporting events, it is easy to lose sight of the norms that govern our everyday life. The law even acknowledges this - anyone who has taken criminal law will know that the rules are different for 'assaults' suffered during athletic activities (R. v. LeClerc, for example). Witness again the changes wrought on the Faculties of Medicine and Law during the Malpractice Cup, when students who would normally be cordial were suddenly arguing over fouls in a game of Ultimate, or yelling over soccer calls.

And yet...

There's positive aspects to the release of norms that seems to accompany sports. I challenge you to walk from the Faculty to the Sports Centre with a soccer ball under your arm and not be approached by at least one person wondering if you're going to a game or practice, and, oh, would you mind if they played too? Playing on an intramural team opens up new opportunties for friendship, and for discovering skills you didn't know you had.

For good or bad, sports seem to be a powerful mechanism to break down social rules. In the midst of hazing incidents, doping controversies, and soccer riots, it is best not to lose sight of the positive aspects of sports - and to get out of your apartment for a walk on Mount Royal on October 7th, the journée nationale du sport et de l'activité physique.

-L.M.

OCI Interviews

Or, How I Learned to Stop Worrying and Completely Bomb

by Sam Carsley (Law II)

I: Good afternoon, Mr.Carsley. Please have a seat…no, no, you don't have to sit on the floor. In one of the chairs, if you please.

S: Of course, I'm sorry.

I: Not at all. That's better. Now, everything all right? You seem to be sweating quite a bit. Did you find the place okay?

S: Yeah, sorry about making you wait. I haven't lived here very long so it took me a little longer than I expected.

I: Haven't you lived in Montreal most of your life? Your resume shows that you've lived here for the better part of the last twenty years.

S: Does it really?

I: Yes.

S: Hmm….

I: In any case, you're here now. Let me first just say I appreciate your enthusiasm in embracing our casual Friday office policy. Normally students go for the power suit option.

S: I'm a team player.

I: Of course you are. Are you really a certified bikini inspector?

S: It's just the t-shirt. I don't think there's such a thing as a certified bikini inspector.

I: I don't think so either. Anyway, I'm getting off track. We're very happy that you chose to apply to our firm. I just wanted to get a better sense of why you might enjoy working here.

S: Well, I really think your mission statement speaks to my goals and personality. I'm very interested in IP and have done some extensive research at McGill in the field, so I think that I have a lot to offer. And the atmosphere here is great; everyone seems very pleasant and professional.

I: Very good. Is there a particular reason you're speaking with an Indian accent?

S: Was I?

I: I think so.

S: My mother's Indian?

I: No, no. I saw your mother with you in the hallway just before as you were weeping uncontrollably. She didn't look Indian.

S: No, I suppose not. Do you think you could tell me about the summer program?

I: Sure. It's fairly straightforward. We're a large firm and deal mainly with corporate clients, but we want to work the students through various areas of the law and give them a practical overview of our work. There's also a social program that introduces you to the other students and lawyers in the firm outside the office. Softball, BBQs, and the rest.

S: And what about hazing?

I: Pardon me?

S: Hazing? Initiations, rites of passage…that sort of thing. I once had to streak a first-year biology lecture for varsity. It was awesome.

I: *(silence)*

S: Is there anything else you'd like to know?

I: Are you sure that you're in law school?

S: Absolutely.

I: And you're sure you want to be a lawyer?

S: Positive.

I: What if I give you a free pen and you never come back here again?

S: Sounds great.

I: Done.

S: Can I have two? I like to pretend that I'm having swordfights with myself in class.

I: Take the box.

S: Wow, you're the best.

I: It's my pleasure…that's the closet. The door's on the left.

S: Sorry. Thanks again.

I: *(on the phone)* Colin, could you please cancel all interviews for McGill students and make sure that that Carsley kid leaves the building?

C: *(on the other end)* I see him outside. It looks like he's chasing a squirrel. Now he's throwing pens at it.

I: Thank you, Colin. ■

The Square:

An Outsider's Look on Life in Hippest City in Canada

by Nicholas Dodd (Law I)

Picking up and moving to a new city to, let's say, for example, begin the magical adventure that is law school, involves its fair share of trials and tribulations. Among other things, one must discover all over again those essentials of urban life one had come to take for granted – like where to get groceries at 1am, what frequency the CBC transmits at (or Radio-Canada for those of you so inclined), and, most importantly, where they sell the really cheap beer. However, all these things are small potatoes (except the beer thing perhaps) compared to another aspect of somewhere new – the roommates.

Now, the reason I bring this up is that I, without my knowledge or consent, have over the past month and a half been exposed to an essential aspect of Montreal culture through one of my dear roomies. Namely, the distinctly Montrealais use of the work fuck. You see, my Quebecois roomie has the tendency to finish a good third of his sentences with the work fuck. Until recently I just thought of this trait as an endearing characteristic that would grow on me, fuck. But as a recent article in *Hour* alerted me, people in Montreal just tend to talk this way, fuck. The author of said piece called it a 'hanging imperative modifier' – which I feel is a completely insufficient term to describe one of the most bizarre linguistic idiosyncrasies I've ever encountered. For those of us wishing to fully integrate however, I guess we better get on the bus, fuck.

Continuing with the theme of learning the essentials, most times that I've found myself in a new place I make it one of my first priorities to scout out a restaurant with a solid breakfast. After all, nothing sorts you out after a night at Bifteck like a solid breakie. Unfortunately (or wait, fortunately??) this task is nearing the insurmountable in Montreal. Not for the lack of choice, of course, but for the overwhelming plethora of amazing locales to get that oh-so-essential first meal of the day. I don't believe there are any stats that would attest to it (and even if there are I'm much too swamped by reading to go looking for them) but I would hazard to say that Montreal has the highest concentration of breakfast joints in the Western world. So throw your cholesterol and general health concerns to the wind and get out there and gorge!!

Of course by the time you read this Pop Montreal will have come and gone, and the debate over which band rocked the hardest will kick into full swing. I managed to catch a preview show the other night, and it was an excellent indie time – if you ever come across the band Dragonette, and you like your rock with a sexy female lead, don't hesitate to check them out. If you didn't make it to a show, fear not – there are a ton of excellent shows coming to town over the fall, so if you can bear to put down the books for an evening, get out there and groove. Until next time, study hard, play harder and don't drink on the streets of the ghetto – you'll get hassled by the man. ■

Assistant Dean Bélanger
will offer an

INFORMATION SESSION ON
EXCHANGE PROGRAMMES

Wednesday, October 12, 2005
12h30 – 14h00
Moot Court

Problems, Solutions and the Question of Diversity

by Patricia Ochman (Law IV)

The dissents written by Justices Douglas and Goldberg in the 1964 U.S.S.C. case *Wright v. Rockefeller* elaborated certain arguments against racial gerrymandering. The case revolved around the rather odd division of the 17th and 18th Districts of the Island of Manhattan. This arrangement created one White district and one district with a Puerto Rican and Black majority. The majority of the Court found that there was no evidence that there were any racial considerations in such a division.

Douglas and Goldberg, JJ. considered the "separated but equal" argument. Concentrating Puerto Ricans and Blacks into one neighborhood would enable them to get representation which they would likely not get in a mostly White neighborhood. However, both justices concluded that equal means equal and that segregation has no place in a democratic society, regardless of the seemingly good intentions which may underlie the idea.

The question that stems from this case is whether there can be labeling or segregation which would actually serve to preserve or promote minority rights or to find solutions to poverty. The point of this article is that labeling serves to find solutions to the wrong problems. "Giving" a Black congressman to a predominantly Black neighborhood will not solve the underlying problems of poverty, access to resources, discrimination, etc.

In certain countries, such as Cyprus, minorities actually demanded to be treated separately and to have separate voting rights. Separating the various groups was also a strategy in India, under the British Empire. As exposed by Justice Douglas, the British thought that awarding separate voting rights to each segment of society was beneficial. The British believed that the people of India were so divided by race, religion and caste that they were unable to consider the interests of any but their own section. Justice Douglas stated that such segregation is "a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense".

Malcolm X thought that minorities need to rely on themselves to achieve emancipation. However, in order to achieve such emancipation, there needs to be equal access to resources (such as education) for everybody. Referring to the Mertonian analysis of society, crime arises when people want to achieve the socially proposed goals (money, a successful career, etc.), but do not use the socially acceptable, or institutional, means available. They fall back on theft, drug dealing and other such crimes. In general, they do not ambition to participate in those activities, but they want, just like anybody else, to achieve the goals that are pushed upon them every day by the media and the surrounding world. Merton thus stated that crime occurs where there is cultural inclusion and structural exclusion. This explains why many poorer countries have lower crime rates than industrialized countries. People do not always have the means to choose the group they belong too; all should have the opportunity to choose the socially acceptable means of achieving the socially proposed goals. The point would thus be that offering equal opportunity of access to the means to achieve these goals leads to better social cohesion. Clustering members of minorities together does not allow for social cohesion and does not allow for others to come in touch with a reality they do not quite understand. This lack of understanding leads inevitably to the lack of adequate mechanisms to deal with poverty, segregation and crime.

As a society, we tend to appreciate diversity and our daily lives are becoming more and more submersed in it. However, diversity can mean difficulty. And as a society, we want the diversity, but not the difficulty. Racial or class neighborhoods are an attempt to avoid difficulty and confrontation because the "problematic" diversity is somewhat set aside. There is a tendency to adopt an actuarial approach to problems of diversity. The actuarial approach focuses on risk management, and claims to be impartial and neutral, but it does not look at the underlying causes of the problem. It seeks to avoid trouble rather than to understand it. We worry about poor children, but we do not look at the poor adults they rely on. However, it seems to be a social choice to focus mainly on the problem and not on the cause. This brings us back to gerrymander: does allowing a Black district to have a Black congressman solve all problems? It is unfair to examine numbers and statistics without knowing what they mean.

Members of the middle class accumulate wealth in their houses, which is counted into statistics but may amount to nothing once it depreciates. Considering additionally the high amount of debt of the average household, the middle class may not be so far apart from the lower class in its ability to pay off loans. However, for one who lives in a slum and who gets a bit richer, it is hard to get a loan from a financial institution to improve his apartment because banks have their risk tables. The risk table allows a middle class person to get a loan, but not a lower class person. The richer thus move out of the neighborhood ▸

which they cannot improve. Or the poorer move out because they cannot afford it anymore. We want diversity, yes, but not the difficulty of providing equal access to resources, such as credit.

Another example can be found in crime statistics. If the statistics point to the fact that youth belonging to a racial minority have more chances of possessing drugs, such youth will be pulled over or questioned more frequently, which serves to feed the statistics. If no one questions non-minority or seemingly "clean cut" youth, there can be no way of straightening out the statistics and thus allowing for a more adequate solution to questions of drugs, delinquency and such. In this sphere and in others, we prefer categorizing and excluding, because it is easier.

It seems though that labels can be empowering, as when it is shown that those who are part of a minority can be successful too. Such success stories are heard everywhere. Some see them as liberating. Others, however, deem them superficial because one can be different... but not too much. Basically, to be successful, you need to fit into the system in one way or the other. We can immediately think of religious arbitration courts. Religious arbitrations were accepted, as long as they fit into the mainstream. Suddenly, in Ontario, Islamic courts were "too much" because Islam was "so different". There were some efforts to recognize the difference, but fear can easily turn things around.

Society wants diversity, not difficulty. Social segmentation is meant to avoid or diminish difficulty, because we no longer have to deal with it as much. However, Hans Eysenck suggested that crime and deviance occur because of lack of inclusion in the culture of a society. It is thus advantageous for a society to eliminate ghettoization and cultural exclusion. It should not be enough to simply entertain the mainstream with television shows about minorities, in a social effort to include all cultures and classes. We need to include the minorities and under-classes in our economy and in our mainstream society, through equal access to resources and elimination of discrimination.

What can law do then about such unfairness? Should it force the banks to give out loans to the poor? The problem lies in the lack of flow of information in our society. If people were more aware of the different levels at which society works, we could have judgments, regulations and other solutions which correspond a lot more to the deeper causes of issues. ■

The foregoing article reflects a discussion which took place in my Law and Poverty class.

Starbucks v. Synagogue

by Olivier Plessis (Law I)

In Vancouver, my city of birth, God is dead. When people talk about organized religion, they're referring to their weekly scheduled yoga workout. A miracle is three straight days without rain. The closest thing to a daily prayer is "latte grande" uttered at one of the five Starbucks on each block. People are comfortable without God and, judging at least by the continued failure of the so-called "Big One" earthquake to hit, God is comfortable without the people of Vancouver.

Two months ago, my agnostic sensibilities settled in Montreal, a city I knew mostly as steeped in sin and infamous for its guilty pleasures. I was not surprised then, to see the strip clubs next to the dépanneur, the sex shops next to the librairie, and "danse contacte" advertised like some ingenious Montreal concoction. What shocked me instead, right down to the core of my Vancouver godlessness, was the predominance of religious imagery around the city. Resting around my first cab driver's neck and nestled amongst his ample chest hair was a cross, which, as I looked out the widow, turned out to be a miniature of the not-so-subtle cross on Mount Royal, itself similarly nestled among scattered vegetation. I saw gorgeous churches every few blocks. Muslims praying on the lawn. Hassidic Jews dressed to the nines. And Vancouver's preferred religious attire, Lululemon yoga pants, so favoured by young women for their tendency to flatter even the most unfortunate posterior, were nowhere to be seen. I had indeed stepped into a strange new world.

My first few weeks of law school have only seemed to confirm that religious debate may start to play a larger role in my daily life: the very first case we studied involved religious freedom; my classmates actually take a day off on Rosh Hashanah; and, I kid you not, one of my most lively drunken conversations since I've been here involved a discussion about the implementation of Sharia law in Canada. Just try and use that one at a Vancouver cocktail party. God, though perhaps bruised and battered and tired of the strip clubs, is definitely not dead here in Montreal. ■

Extraterrestres à l'école!!

par Hazem Mehrez ("program spécial")

« C'est quoi ton prénom ? »

…non, je suis pas en 1ère année
« donc, étudiant en échange ? »

Non plus, je fais un programme d'équivalence exigé par le barreau du Québec. Et là commencent des regards indescriptibles. Est-ce de l'incompréhension? De la pitié ? De la peur de la différence ? Suis-je un extraterrestre ? Autant de questions qui m'ont traversées l'esprit.

Cela fait désormais quelques mois, que je fréquente la faculté de droit de McGill, afin de compléter un certain nombre de crédits pour que le barreau du Québec me reconnaisse mes diplômes reçus à l'étranger (déjà licence en droit, DESS et DEA)

Tout commence en janvier. Il semble que je fus le seul étudiant qui commença l'école dans la session d'hiver (c'est au moins ce que j'ai cru jusqu'à une date récente quand j'ai rencontré une collègue qui avait commencé en janvier elle aussi). Pas de panique mon gars, petit à petit, je rencontre d'autres étudiants qui sont dans la même situation que moi, à savoir « *non reconnu* » !!

Je dois avouer que ce n'était pas facile de me débrouiller tout seul, que ce soit à la bibliothèque, les moteurs de recherche juridique, l'accès aux salles informatiques et les différents codes d'accès.

Donc, je commençais en hiver 2005, pas de guide d'orientation, pas de privilège d'étudiant de 1ère année, les professeurs de JICP, Family Law et Bankruptcy estimèrent que j'étais déjà au courant de tout !! Dix-sept crédits dans mes premiers mois d'études en Amérique du Nord !! Je n'étais pas du tout familier avec la méthode « vous trouverez l'article sur Azimut ». « C'est qui Azimut ?!! » je demandais avec une gueule d'imbécile !!

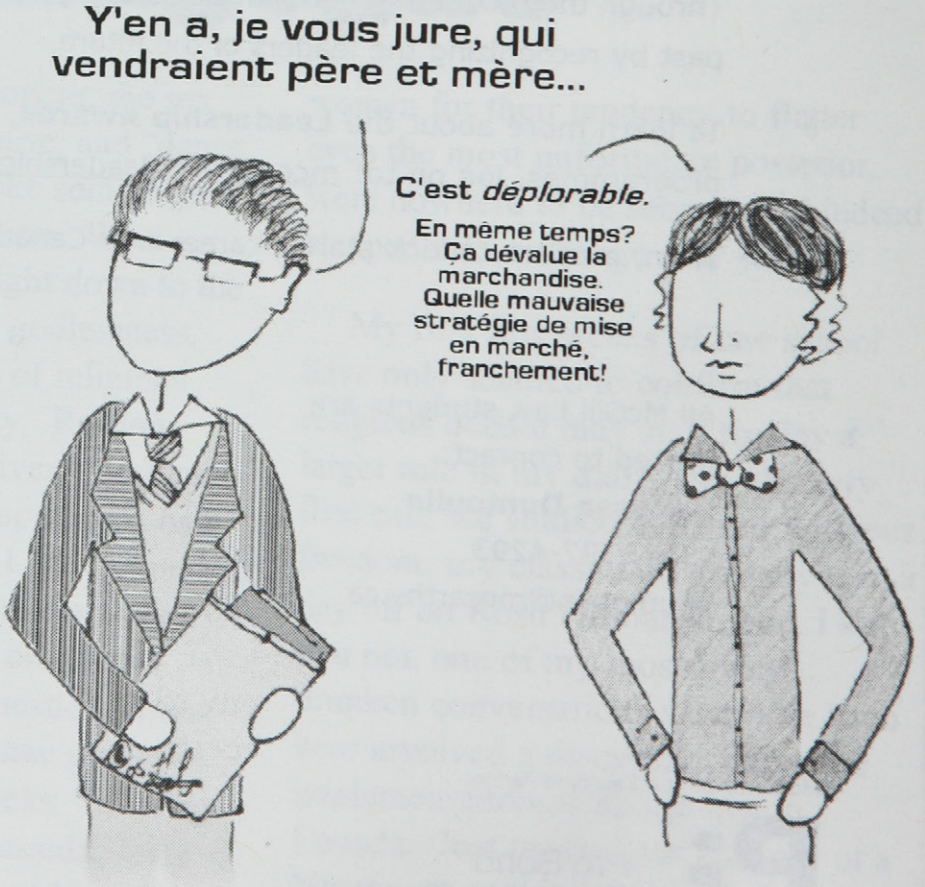
Maintenant, ça va beaucoup mieux ! Mais une autre épreuve s'approche; celle de la course au stage ou la recherche d'un job ! Il va falloir convaincre les cabinets d'avocats de regarder un peu plus loin et dépasser leurs craintes vis-à-vis les « non reconnus ».

Je ne sais pas par quel moyen, peut être que le CPO peut nous aider à attirer l'attention sur les non reconnus ? Faut-il se débrouiller tout seul pour le faire ? De toute façon, il faudra démontrer aux cabinets qu'il y a une catégorie d'étudiants qui suivent un programme d'équivalence ; une minorité des étudiants possédant des expériences non communes, étudiants qui ne sont pas des extraterrestres, mais qui peuvent être compétents, professionnels et dynamiques!! ■

Les aventures du Capitaine Corporate America

par Laurence Bich-Carriere (Law II)

Honneur et juste prix



« Le quatrième commandement »

L'effet CSI montréalais

par Simon J. Seida, Innocence McGill (Law II)

« Ainsi, tout autre facteur étant égal, les coups reçus au sommet de la tête seront plus sévères que les coups reçus au dos. » termina la jeune pathologiste judiciaire brillante du Laboratoire de sciences judiciaires et de médecine légale du Québec, avant de nous inviter à profiter du buffet qui venait d'être servi. La vitesse à laquelle les participants se ruèrent sur les canapés aux crevettes témoignait du peu d'impact que la photo, encore projetée, du jeune homme battu à mort à coups de bottes à embout d'acier sur la tête, avait eu sur eux. En jetant un coup d'œil sur leurs cartes d'identification, j'ai vite compris pourquoi les crimes violents ne les émouvaient plus. En effet, c'est par affiliation que nous nous étions regroupés autour des tables : au fond, les procureures de la couronne, bruyantes; au centre, les sergents-détectives de la Sûreté du Québec affalés sur leurs chaises et, dans un coin, les coroners et les urgentologues, plaisantant entre eux. Pour ma part, je m'étais installé près d'étudiantes en anthropologie dont les yeux s'allumaient dès que la conférencière parlait d'ossements. Mais, histoire de ne pas trop m'isoler, j'ai partagé une pause avec un détective de l'escouade des crimes majeurs qui aimait beaucoup la corde de nylon jaune parce qu'elle conserve bien les preuves ADN lorsqu'un criminel l'utilise pour ligoter ses victimes.

C'est ainsi que, dépêché par Innocence McGill, j'ai passé un mardi entier à entendre parler de changements post-mortem, de lésions par objets piquants et tranchants, de lésions par arme à feu, d'asphyxie, d'électrocution, etc. J'aurais aimé avoir eu l'impression de tirer quelques conclusions philosophiques; après tout, il faut pouvoir s'expliquer à soi-même pourquoi toute une salle de personnes sérieuses étouffent un petit rire en regardant la photo d'un pauvre homme mort lorsque des grains de maïs pénètrent jusque dans ses poumons après une chute dans un silo. La pensée morale du jour ? À quel point le bon voisinage est important quand on sait qu'un voisin peut vous tuer avec une fourchette de barbecue, le mensonge qu'est la dignité dans la mort quand on voit un corps tellement putréfié qu'un pathologiste doit inséré une aiguille creuse dans le cadavre pour faire brûler les gaz rancis qui s'y accumulent, ou est-ce que c'est la simple ironie de la vie humaine patente quand on voit un homme qui s'est tué en aspirant jusque dans ses bronches le cent de cuivre qu'il suçait pour arrêter de fumer ?

Mais je m'égards, j'étais là pour travailler, pour porter une attention surhumaine aux détails. C'est le *modus operandi* de toute enquête d'Innocence McGill : trouver le mot dans l'enquête du coroner, la phrase dans le précis de police ou la pièce à conviction qui suggèrent l'erreur judiciaire. Il suffit qu'un ambulancier ait ouvert une fenêtre sur la scène d'un meurtre avant qu'un expert se pointe pour que l'estimation du temps de décès soit faussée. Si une victime s'est débattue de toute ses forces avant sa mort, la *rigor mortis* disparaîtra plus vite sans que l'autopsie le révèle nécessairement. Des coupures aux mains orientées différemment peuvent signifier soit que la victime a subi des blessures d'autodéfense, ou soit qu'elle s'est blessée en se suicidant. Bref, la médecine légale est un croisement entre la science implacable et l'art morbide. J'en suis venu à cette conclusion en écoutant le directeur du laboratoire – un homme approchant la cinquantaine qui semblait un peu décontenancé devant des spectateurs aussi vivants – parler, tel un artiste, des différences de coloration autour des plaies de projectiles d'arme à feu qui permettent d'affirmer que celle-ci a été causée par l'entré d'un projectile, tandis que celle-là, par sa sortie.

Malheureusement, un jury n'aura pas toujours autant de discernement, surtout si la défense ne présente pas de contre-expertise. En effet, un médecin légiste qui parle de lividités, de taches de Tardieu, de collerette érosive et de résidus de barium peut convaincre un juré de la culpabilité d'un homme sans que ce dernier ne sache réellement de quoi il en ressort. C'est ce que les criminalistes ont baptisé « l'effet CSI » d'après la célèbre émission télévisée. Ce phénomène affecte, d'une part, la couronne qui a plus de difficulté à convaincre un jury sans preuves d'expertise et, d'autre part, la défense qui aura toutes les peines du monde à convaincre un jury de l'innocence du suspect si une seule preuve d'expertise est déposée contre lui.

Alors que doit-on faire en tant qu'avocat de la défense lorsqu'on apprend que la couronne va appeler à témoigner un pathologiste judiciaire ? En premier, ne paniquez pas : un pathologiste n'est pas infaillible. Ensuite, poussez plus loin : est-ce que ce pathologiste a examiné la scène du crime en personne, a-t-il demandé une deuxième opinion, l'urgentologue ayant traité la victime a-t-il fait les mêmes observations ? Demander à un autre pathologiste s'il croit qu'il y a matière à contre-expertise peut faire la différence entre un verdict de culpabilité ou non. À titre d'exemple, 162 personnes ont été exonérées grâce aux services du Innocence Project du Benjamin N. Cardozo School of Law à l'aide d'une simple analyse d'ADN. La science médicolégale s'est perfectionnée, il appartient à tout criminaliste d'en ternir compte. ■

Pour toute information sur le Laboratoire de science judiciaires et de médecine légale, visitez le http://www.msp.gouv.qc.ca/labo/
Pour toute information sur Innocence Mcgill, visitez le http://www.mcgill.ca/innocence/ ou écrivez-nous au innocence.law@mail.mcgill.ca

Elections

Candidates for First-Year President

Eytan BENSOUSSAN

Congratulations on choosing McGill! Here are your classmates, that's the library, and this is your $800 bill for books. Okay, now go study. Don't worry - no really, don't worry! The hardest part of all was getting in - you're home free!

Thanks to those magical words of advice we all got our first week of school, it became apparent to many of us that we would need the best representation possible amongst upper year students and faculty. Instead of screaming until the walls break down, instead of complaining vainly and uselessly to everyone we run into, we need no more than one well-placed, articulate and proactive student to be heard by the right people at the right time. I'm that student.

Student politics is nothing new to me. I was a class president of my undergraduate society in Biochemistry, sat on Academic Committees, you name it. I'm approachable, parfaitement bilingue, et je pourrais certainement être votre porte parole quand vous vous croyez noyé dans la bureaucratie McGilloise. Vous êtes tous les bienvenues de me demander comment je pourrais améliorer votre expérience à McGill. So vote for me, take it easy, and go study. No seriously, go study....

Cassandra BROWN

My name is Cassie Brown and I am running for class president because I love organizing events and speaking up for the changes that my classmates and friends want to see. I have experience working on student councils, and I am both approachable and unafraid to raise concerns on behalf of the people I represent.

Being an out-of-province anglophone student (taking mainly French classes), my presence on the LSA would be representative of our class's diversity. I would also be able to keep up on all of the activities going on around law school through my involvement in the Quid.

If elected I look forward to holding class meetings, planning memorable activities, and writing regular first year updates in the Quid. I would also work with the LSA to improve orientation for next year, benchmarking McGill against its other Canadian and international peers. Over the year I would like to start such projects as research into closer partnerships with US schools for McGill (such as the Osgoode/NYU partnership), first year moots, and mentors for all first years from the legal community.

Please feel free to approach me or to send me an email at Cassandra.Brown@mail.mcgill.ca if you have any comments, questions or suggestions!

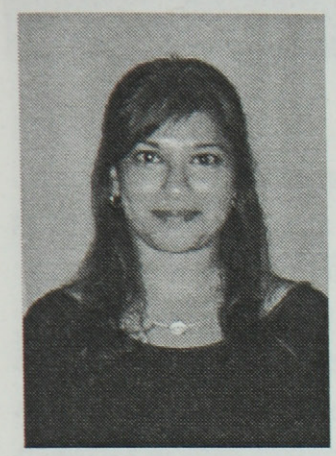
Adele D'SILVA

Hmm...why you should vote for me...well, I suppose I could spout all the usual background credentials, but really, all you'd learn from that is that (like everyone else in this faculty) I love getting involved in whatever communities I belong to, and my endorphin levels spike whenever I'm given the opportunity to represent my amazingly spectacular peers (gratuitous flattery never hurt an election campaign, right? ;).

Although I can't promise you soda pop in all the water fountains, I CAN promise that I'll put in whatever time and effort is necessary to represent your interests and concerns. I even gave serious consideration to the idea of setting up a mini shantytown on the lawn outside, so I can be available to serve your interests 24/7. But I figured that might just creep you all out. So instead, I think you should vote for me because I have sweet numchuk skills....

Elections

Monika RAHMAN



It is hard to believe that we've only been here together for one month! While we all love our new brew of Thursday afternoon coffee, I know I've also had moments of angst trying to figure out whether weeknights will entail anything other than reading ever again.

What will get us through this next year with our sanity intact is staying connected to the student body through all the available channels that the LSA works hard to make possible. Je serais ravie de travailler avec le (la) co-président(e) afin d'assurer que ces voies restent ouvertes pour vous.

I am confident that I would clearly and effectively make our views and interests heard by the LSA Council and Executive, and also make sure you have all the relevant information you need. J'ai beaucoup d'expérience avec ce genre de travail dans le contexte professionnel, ainsi que dans le contexte académique, comme à Queen's, où j'ai tenu une variété de positions exécutives.

So make your way to the Atrium on October 4th and vote for Monika Rahman - I am ready and energized to work with the LSA to help make this the best first year possible.

Candidates for Faculty Council

Ryan ANDERSON

Faculty Council! Pedagogy (how and why teachers teach), course offerings, course selection procedure - these are the issues I would like to focus on and why I am seeking a seat on the council. Why would one sign up for this duty? In my particular case it is a matter of consistency. I was similarly involved while an undergrad, served as a public school teacher in the Bronx, NYC, worked with the Minister of Education in East Timor, and was raised by a family of educators. Teaching and learning has been and will be an important commitment in my life, and I hope to demonstrate this commitment here at McGill with the help of your vote. Thank you!

Efua COBBINA

Qui suis-je? Je m'appelle Efua Cobbina et je suis dans ma 2ieme année de droit.

What am I running for? I would like to be your student member on the Faculty Council. The Faculty Council is responsible for changes to the structure, content, and overall direction of our program of study. As your representative, I will be eligible to vote on issues that directly affect our education.

Why Efua? I am a dedicated individual who likes to assert her fundamental rights to speak her mind and vote. As your student representative, I will represent your interests in the following initiatives in the faculty:

- "The pilot project to write final exams on computers.
- "Professor Blackett's report on student evaluation, i.e., pushing for multiple assessment courses instead of the 100% finals we are all too familiar with.

Vote for EFUA to ensure that your voice is heard! Thanks.

Elections

Candidates for Faculty Council

Pierre GEMSON

Je m'appelle Pierre Gemson et je suis dans ma première année à la faculté, originaire de Toronto. Although new to the faculty, I have past experience advocating on behalf of students, which was very rewarding and which I think would serve me well in representing you effectively.

Ma première responsabilité comme représentant serait d'exprimer et de défendre les intérêts de tous les étudiants au près du conseil. In an ideal world, I would seek such monumental improvements to student life as reducing the excessive and inefficient width of student lockers, increasing the quantity of light-up pens available to new students, and making it even colder in the Moot Court - year round. My long-term project is, of course, a significant reduction of the hill gradient on Peel St. to benefit all students winded by the uphill trek. However, as a starting point, I propose to work for more adequate facilities for laptop users, which are clearly insufficient. I also believe that the downstairs space in New Chancellor Day Hall could be made into a more pleasant place for students to work and relax.

I am eager to hear your thoughts about what you want from the Faculty Council and look forward to hearing from many of you. Je vous remercie de votre support.

pierre.gemson@mail.mcgill.ca

Naomi KIKOLER

For the last two years I have participated in the regular post-coffee house debates over the nature of legal education here at McGill law. Now that I am in my third year at McGill I would like take those conversations, and the ideas that they generated, and do something to improve this faculty. I would like to use my experience working in similar settings at the undergraduate and graduate level to take our concerns and ideas to the people that can enact institutional change, the Faculty. We as an institution need to foster an environment that humanizes the study of law and reflects student and societal diversity.

I would like the Faculty to:

- Make a priority improving student mental health (e.g. holding sessions on positive living and balance.)
- Integrate public interest careers day into the mainstream careers days.
- Make a commitment to taking McGill's "holistic" approach to legal education out of the pages of the brochure and into the everyday reality of our legal education.

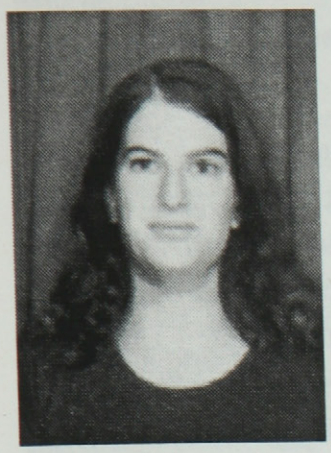
Change cannot only be student driven, the Faculty must recognize and acknowledge student needs to a degree that is not necessarily occurring today. Let's use the ingenuity and resources that we as students have to bring about lasting change. To start the ball rolling I would suggest that the 6 Faculty Councillors that you appoint should hold in early October a Town Hall meeting to gather student input on what issues are pertinent. Together we could then move forward.

Vote for me because I have experience, I have ideas, I want to listen to your concerns and most of all, I care about improving student well-being here at the faculty.

As Dr. Seuss would say: "Vote for Naomi and Oh the place's McGill law will go!"

Elections

Sylvia RICH



There are many things that I would like to do for the school as a Faculty Councillor, among them:

1) Re-think the Foundations course. There are things every law student should learn in first year, and this is an excellent place to teach those things. I have a lot of ideas of how to make the course interesting and useful.
2) Introduce waiting lists for course registration.
3) Put plugs into room 202 (the Moot Court plugs are already on their way).

David SANDOMIERSKI

I care deeply about our legal education. I believe strongly, for example, that the rule requiring first year courses to have a final exam worth at least 60% belongs in the dustbin. I think there should be more writing in first year and that Legal Meth should be better integrated into our substantive courses. The registration system should allocate courses according to preference, not cybercompetence. And I believe that learning happens when we are inspired, so we should hire new profs who excite us and encourage us to think differently.

Mais je ne pose pas ma candidature pour avancer un programme personnel. J'ai choisi McGill en partie pour les débats, les réflexions, les critiques que nous, les étudiants, apportons à notre éducation. Comme votre représentant, je m'engagerais à écouter, discuter, et amener au conseil de faculté les suggestions qui seraient autrement implicites.

Jacob WILSON

Salut, mon nom est Jacob Wilson. I'm "frosh", and I'm running for Faculty Council. Je viens originalement de Toronto (si ça ne vous incite à m'élire, je ne sais pas ce qui le ferait!).

Having been here all of a month, I still don't know what I stand for. (Please don't tell me that makes me a Liberal). Si quelqu'un a des préoccupations sur n'importe quel sujet, faites-moi le savoir! I like to think that I'm approachable and I've got the guts to speak up to the profs and bring them over to our point of view. Je veux qu'on tienne plus de referenda électroniques et j'aimerais agir sur les résultats comme conseiller.

J'aimerais aussi sièger sur le comité d'embauche. I would relish nothing more than grilling a professorial candidate, screening out the stuffy ones, and ensuring they're dedicated to teaching at least as much as to research.

All candidates can be contacted by e-mail at their webmail address. All protests concerning any aspect relating to elections or referenda shall be served personally to the Chief Returning Officer within twenty-four (24) hours after the closing of the polls (s. 5.3 of the LSA by-laws). For any further detail, please contact Laurence Bich-Carrière, Chief Returning Officer at cro.law@mail.mcgill.ca.

Rendering Unto God:

Islamophobia and Religious Tribunals

by Prof. Roderick A. MacDonald, F.R. Scott Professor of Constitutional and Public Law; Faculty of Law, McGill University; Fellow, Pierre Elliot Trudeau Foundation

Among the central features of most monotheist faiths is the belief that God's will provides principles of just conduct through which human beings may organize their relationships with each other, with the broader community in which they live, with other creatures and with their environment. Long before there existed the modern nation-state, religions such as Judaism, Roman Catholicism and Islam had developed legal regimes involving rules, doctrines, procedures and dispute-settlement institutions to specify and apply these divinely-ordained principles for human society.

The post-enlightenment revolutions in Europe, however, appear to have induced a collective amnesia about the significance of these legal traditions and their accompanying institutions.[1] Now it is common to associate the idea of law - the making, interpreting and enforcing of rules of just conduct - exclusively with the State. Yet despite this perception, numerous "unofficial" legal regimes and dispute-resolution institutions may be found in Canada today: some, obviously, are religious; others - for example, those governing international commercial law or the workplace, or arising in family, local or regional customs and practices, or found in different ethno-cultural communities - are not. Legal plurality abounds.

The contemporary co-existence of secular State law and religious law is particularly noteworthy. Consider, for example, the role of religious law and religious courts in relation to marriage and divorce. Not all religious rules in matters such as consanguinity prohibitions applicable to intending spouses, annulment of marriage, separation from bed and board and the availability of divorce are identical to those of the State. As a result, to marry legally but also within one's faith involves two acts - a civil act and a religious act. These are often combined in a single ceremony.[2] Similarly, for the faithful, ending a marriage also involves both a civil and a religious act. Each act is valid within its own sphere but no further. Hence, a divorce granted or recognized by a rabbinical court or a marriage annulment pronounced by a Canon law court avails nothing in Canadian family law. Remarriage in the absence of a divorce or an annulment obtained civilly still constitutes bigamy.[3]

There is, nonetheless, something new in recent developments relating to "faith based tribunals" and this grounds much of the concern about Islamic tribunals today. For the first time the State is being asked, or is offering, to lend its official sanction, through the device of consensual arbitration, to religious tribunals applying religious law, even in matters relating to the family.[4] Three main issues are raised by such initiatives: (1) what is the legal status of these arbitral tribunals, and what will be the effect of their decisions? (2) What substantive legal rules will they apply? And, (3) what will be the on-the-ground social and political effects within Muslim communities of officially recognizing these tribunals?

Take *first* the question of legal status. Obviously, neither religious courts nor other faith-based arbitration tribunals need the sanction and backing of the State in order to exist. Like any other private decision-making body, they are established by members of a particular group, economic interest, or community and are legitimate to the extent they attract the fidelity of those who appear before them. As non-State tribunals, their jurisdiction is conferred by the parties, who may agree to submit to their authority once a dispute arises or, in advance by virtue of adherence to a particular faith. To date, no one is claiming that, in the manner of binding collective agreement arbitration under a *Labour Relations Act* or the jurisdiction of ecclesiastical courts in early England, recourse to such tribunals should be made mandatory for members of particular religious communities.[5] The more pressing issue is whether decisions of these tribunals can be enforced in the same way as judgements of State courts.

To the extent religious tribunals formally constituted as consensual arbitrators under Canadian law are just making decisions about questions of property and obligations like ordinary commercial arbitrators, there is no reason why the fact that they are faith-based, and applying a body of law other than that of the regular courts should prevent their decisions from also being final and binding. But what about jurisdiction over such disputes in relation to family matters (support obligations, spousal gifts, matrimonial property, intestate succession, wills and trusts) or in ▸

APPEL DE CANDIDATURES POUR LA PUBLICATION DE DROIT DE LA SANTÉ DE MCGILL

La Publication de droit de la santé de McGill (MHLP) invite les étudiants de la Faculté de droit de toute année à poser leur candidature pour les comités de rédaction et d'administration.

La « Publication » est un nouveau projet entièrement conçu et dirigé par une équipe d'étudiants. Un premier numéro électronique composé d'articles universitaires couvrant un ensemble de sujets tels que les politiques en matière de santé, la médecine et le droit, sera publié dès l'automne 2006. Il s'agit d'un projet-pilote avec pour but d'évaluer le potentiel de produire une revue universitaire dans le domaine du droit et des politiques en matière de la santé au sein de la Faculté de droit de l'Université McGill.

Nous acceptons des candidatures pour les postes suivant:

Équipe de rédaction :
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Rédacteurs (anglais)
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Un engagement de 3 à 4 heures par semaine (des variations sont possibles selon les étapes du travail de publication) est reclamé pour chacun de ces postes.

Vous avez jusqu'au jeudi 6 octobre à 17h pour soumettre vos candidatures en déposant un curriculum vitae et une lettre de motivation dans l'enveloppe «McGill Health Law Publication », située sur le panneau à l'extérieur du bureau de l'Association des étudiants en droit. Les lettres de motivation ne doivent pas faire plus de deux pages, et illustreront les qualités de rédaction des candidats. Nous vous prions de bien vouloir inclure dans votre lettre les raisons pour lesquelles vous souhaitez travailler avec la MHLP, les postes pour lesquels vous envoyez votre candidature, ainsi que vos expériences et qualités pertinentes pour ce type de travail. Les entretiens auront lieu à partir du 13 Octobre. Les candidats sélectionnés seront prévenus par courriel. Il est donc important que vous indiquiez votre courriel ainsi que votre numéro de téléphone dans votre dossier de candidature.

Pour plus de renseignements, veuillez adresser vos questions à :
daniele.ambrosini@mail.mcgill.ca
rubyashtar@gmail.com
gillian.nycum@mail.mcgill.ca

MCGILL HEALTH LAW PUBLICATION CALL FOR APPLICATIONS

The McGill Health Law Publication (MHLP) is currently accepting applications from law students of all years for its managerial and editorial boards.

The Publication is a new, student-led project that will publish an online peer-reviewed compilation of scholarly articles covering a range of topics concerning health policy, medicine, and law, in the fall of 2006. This is a pilot project with a view to assessing the long-term sustainability of an academic journal in health law and policy at McGill's Faculty of Law.

The following positions are available:

Editorial Team
Senior Executive Editor
English Editors
French Editors

Managing Team
Managing Editors
Webmaster(s)

The time commitment required for these positions will be approximately 3-4 hours
per week, depending on the phase of the Publication.

To apply, submit a CV and letter of intent to the envelope marked "McGill Health Law Publication" posted on the board outside the LSA office by 17:00 on Thursday, October 6, 2005. Letters of intent will be regarded as writing samples and shall not exceed two pages in length. Please include why you are interested in working with the MHLP, which position(s) you would like to be considered for, and relevant skills or xperience. An interview process will begin on Thursday, October 13. As all candidates will be notified by email for an interview, be sure to include your email as well as a telephone number.

If you have any questions, feel free to contact:
daniele.ambrosini@mail.mcgill.ca
rubyashtar@gmail.com
gillian.nycum@mail.mcgill.ca

Place your orders for organic fruits and vegetables on Mon and Tues from 10-4pm at the coatcheck near Gerts in Shatner (3480 McTavish). Pick up: Thurs 2-6pm
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relation to matters of capacity and status (marriage, annulments, separations, divorce, filiation of children, *etc.*) as is now being claimed by promoters of the Islamic Institute of Civil Justice? The *Arbitration Act, 1991* in Ontario, by contrast with the law in other provinces, contemplates not only that decision-making authority in these other areas can be conferred (subject to some public policy limitations respecting children) upon both secular and faith-based arbitrators, but also that the arbitration may be guided by substantive legal principles other than those of ordinary Canadian law (again subject to certain public policy limitations on questions of status — grounds for annulling marriage, or for granting a divorce, for example).[6]

What is the legal effect of such a delegation? Today, even if parties (say to a divorce) agree on certain matters prior to coming to court, the judge is not required to accept the terms of their agreement — whether in relation to questions of status, custody of children, or of support obligations. This would equally be true had they referred their case to an ordinary religious court applying religious law for a ruling to which they agreed to be bound. But if that religious tribunal were acting under the Ontario *Arbitration Act*, it would have final authority to decide matters of status and collateral economic obligations, subject only to the public policy rules just noted and, ultimately, to the general oversight that State courts exercise over all types of consensual arbitrations.[7]

This leads directly to the *second* concern — one with overtones of Islamophobia. Some worry about Islamic courts because they believe that, unlike Rabbinical courts and Canon law courts, these tribunals will be applying substantive rules of Sharia law that are contrary to Canadian values such as freedom, gender equality and non-discrimination. It is true that, in principle, Judeo-Christian religious law is at the foundation of secular Canadian law. But this does not mean that, by contrast with Sharia law, Talmudic law and Canon law are today on all points consonant with Canadian law. Consider the following issues in relation to Canon law and Talmudic law: do they permit same-sex marriage? Do they mirror secular rules regarding the legitimacy of children? Are the conditions for claiming an annulment, a separation or a divorce, or the rights of survivors in a succession gender neutral?

There is also an assumption that Sharia law is at once barbarous and monolithic. The proposition is dubious. In some dimensions, one might justly claim that Sharia law is more attuned to transactional fairness than Canadian contract law: for example, Sharia principles of fair exchange are much more oriented to protecting vulnerable consumers than the rules now found in consumer protection Acts; and the Sharia prohibition on usury is more rigorous than rules aimed at controlling rates of interest under the *Interest Act*. Unfortunately, in much of the concern about Sharia courts there is a caricature of a rich Islamic legal culture.[8] Rather than asking exactly what rules are in issue and how they are actually being applied, critics take a stereotyped view of all Sharia law on the basis of the worst-case interpretation of Koranic texts.

Still another assumption is that Canadian courts are powerless to correct the application of any "value-offensive" rules applied by Sharia courts. Stated as an absolute, this proposition is also dubious. Whatever jurisdiction Sharia courts may exercise under an *Arbitration Act* will always be, just like any other arbitration, subject to the supervisory control of the provincial superior courts. The central issues, as expressed in concerns over faith-based arbitrations generally, are the extent to which this power of judicial oversight can be limited in advance, and whether it will actually be invoked by those who have submitted their disputes to religious tribunals.[9]

This brings me to a *third* general consideration: what of the on-the-ground social consequences of acknowledging the existence and authority of religious tribunals like Sharia courts? This is a pragmatic concern that requires us to look beyond the law in books and to ask what will be the consequences for Muslim women, men and children, and for their integration into Canadian public life. Assume, for the sake of argument, that Sharia law necessarily conceives of the place of women in society in a manner repugnant to Canadian values. Because, unlike *ad hoc* commercial arbitration panels for example, Islamic courts operate within a comprehensive socio-cultural normative framework, the concern is that officially recognizing faith-based tribunals would run the risk of legitimating an entire religious private law regime and that this regime would come to displace secular civil law in the hearts and minds of the faithful. Consequently, the argument goes, the State should not act in any way that would permit religious courts to gain a toe-hold in people's consciousnesses; and, the argument continues, this is especially important in immigrant communities where traditional values are believed to be in competition with Canadian values, where linguistic and cultural barriers may further isolate women from the broader society, and where theocratic as opposed to secular views of the relationship of church and state may still be dominant.

How realistic is it to imagine that the State could effectively *proscribe* ▸

recourse to faith-based tribunals and courts? Not very, for two reasons. First, given the long presence of Canon law and Rabbinical courts, such a reversal of Canada's policy of religious toleration simply because other faiths are now becoming prominent would be unwise and unworkable. Second, it would be discriminatory and irrational were the State to prevent people from arbitrating before faith-based tribunals applying religious law while authorizing them to do so before secular arbitration panels deciding cases "in equity and good conscience." Indeed, if we are genuinely committed to the idea of a secular, pluralistic, multicultural and religiously diverse society there will always be a place for faith-based tribunals. The true challenge is to frame an appropriate relationship between religious law and secular law, and the jurisdiction of faith-based tribunals in relation to that of the ordinary, secular courts so that the goals one seeks to accomplish by law are realized in fact. Consider in this light, the current approaches in Ontario and Quebec.

Presently, section 37 of the Ontario *Arbitration Act* permits religious tribunals to undertake voluntarily arbitrations even in matters of family law, including issues of status and capacity. Under such a regime, one would want to know whether women are being coerced into invoking arbitration by Islamic tribunals, whether the procedure being adopted is consistent with basic principles associated with the Rule of Law, whether their basic rights under Canadian law are being respected, and whether they retain any power to contest the fairness of a proceeding and its outcomes before the State courts. In Quebec, by contrast, article 2639 of the *Civil Code* does not permit consensual arbitration by anyone of these kinds of disputes. Not surprisingly, under this regime the key questions are similar. One would want to know whether women in Quebec will be coerced into faith-based arbitration of family matters anyway, and if so, what actually takes place within such arbitrations, and whether the unenforceability of the order of the tribunal in State courts will actually have any bearing on the effective finality, in fact, of these decisions. Formally depriving faith-based tribunals of arbitral jurisdiction in family matters is no guarantee that the social pressures to invoke their jurisdiction that critics in Ontario fear will be significantly palliated.[10]

* * *

What, then, to conclude? First, there is a powerful argument that actually making religious courts illegal, or publicly stigmatizing them as in the resolution of the Quebec National Assembly this year, would simply drive them underground, where their processes and decisions would be even less public than presently. It might moreover, vest them with even greater legitimacy and presence in the community as a bulwark against "morally-corrupt secularism". Second, there is an equally powerful argument (grounded in concerns about the need to reinforce Canadian legal values such as equality of spouses) not to recognize their arbitral authority, in relation to status, capacity and family matters, as article 2639 of the Quebec *Civil Code* now provides. Third, there is a strong case (grounded in principles of religious toleration) for adopting the approach of section 37 of the Ontario *Arbitration Act*, presuming that the conditions under which this authority in family matters can be exercised and reviewed are properly specified.

Theoretically and practically, either of the approaches taken by legislatures in Quebec and Ontario is preferable to outright prohibition of religious law and faith-based tribunals. Both ultimately will lead to a more nuanced integration of concerns and values of religious legal systems into the overall framework of Canadian law, and a greater penetration of Canadian law into the interpretation of principles comprising religious systems. Faith-based tribunals would be brought into the public domain, where (without losing their religious and cultural distinctiveness) their jurisdiction and its exercise could nonetheless be held to the foundational principles of secular legality in Canada.[11]

The best way to ensure a tolerant secular liberal-democratic State in a culturally and religiously diverse society is to maintain a rigorous *distinction* between different legal regimes and in particular between religious law and secular law. But this does not mean totally *separating* these various legal regimes from State law. As with the debate about whether students should be permitted to wear religious symbols in public schools, the issue with faith-based tribunals is how to achieve the best accommodation of religious observance and secular Canadian values. One seeks neither the wholesale importation of religion into secular law, nor the wholesale rejection and marginalization of religious practices and values. In this light, both the demands of Pentecostals in Bible-belt USA who wish to conscript the state in the service of Christian fundamentalism, and the isolationist tendencies of certain Amish, Hassidic, or Hutterite communities, and polygamous communes like Bountiful in British Columbia must be resisted. The one Canadian legal value that must always trump is secularism: the denial of theocracy.

To create the ground upon which an appropriate encounter between religious law and secular law can take place, the State must refrain from imposing a legal regime that implicitly compels those who promote faith-based arbitrations - in the instance, Imams (or Rabbis; or Canon law judges) - to ▸

face the familiar question typically posed by anti-Semites: are you a Muslim (Jew; Christian) or a Canadian? Rather, the State must aim to nurture their understanding that their legal legitimacy and authority in Canada presupposes their own openness to contesting versions of Islam and Sharia law (Judaism and Talmudic law; Christianity and Canon law). Legal plurality in secular law implies legal plurality in religious law.

Just as there is no one Muslim voice, there is no one liberal voice, there is no one women's voice, and there is no one single Canadian legal voice. Asymmetric and plural socio-cultural contexts presumably will generate asymmetric and plural legal responses: that is, it may well be that to ensure a healthy interaction of religious law and faith-based tribunals with Canadian law and courts, the approach taken in section 37 of the *Arbitration Act* is optimal in Ontario, and the approach taken in article 2639 of the *Civil Code* is optimal in Quebec.[12] Absent a detailed factual inquiry one cannot know with certainty. Nonetheless, acknowledging and reinforcing Canada's longstanding legal pluralistic tradition of rendering unto Caesar that which is Caesar's will not only help to counter Islamophobia, but also will enable all Canadians, whatever their faith, to understand the role and significance for many citizens of continuing to render unto God the things that are God's.[13] ■

[1]For a general overview of religious legal traditions, see H.P. Glenn, *Legal Traditions of the World* (2d ed.) (Oxford: Oxford University Press, 2003), especially c. 4 - "A Talmudic Legal Tradition" and c. 6 - "An Islamic Legal Tradition".

[2]The matter is complicated in Canada because the substantive grounds for marriage and divorce in Canada fall to the federal Parliament under s. 91(26) of the *Constitution Act, 1867*, whereas requirements relating to the celebration of marriage fall to the provinces under section 92(12) of the *Constitution Act, 1867*. By virtue of this latter power, many provinces authorize religious officials to perform sectarian marriage ceremonies that would also avail for purposes of the state marriage law, assuming the substantive and other formal requirements for a valid civil marriage are met. Of course, because section 92(12) speaks only to the "celebration of marriage" provinces cannot directly give an analogous role to religious officials to formally pronounce an annulment, a separation or a divorce.

[3]Some argue that the State should delegate to religious officials a role in all family matters like that currently existing in respect of "celebration of marriage". Historically, this was the case. In the 1866 *Civil Code*, all acts of civil status were maintained in a parish register, and these registers recorded religious, not secular events: thus, acts of baptism, not birth; and acts of burial, not death.

[4]On December 20, 2004 the Boyd Report, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, dealing with the jurisdiction of faith-based tribunals under the Ontario *Arbitration Act* S.O. 1991, c. 17, s. 37 was released. On May 26, 2005, notwithstanding article 2639 of the Quebec *Civil Code* which already prohibited arbitration of "family matters", the National Assembly passed a resolution specifically declaring that Islamic tribunals were not empowered to decide such matters. For a general overview see Myriam Jézéquel, *Le Barreau*, vol. 36, no. 18 (November 1, 2004). While Islamic tribunals are the presenting issue in the current debate, it appears that Rabbinical Courts and Mennonite tribunals have been exercising an arbitral jurisdiction in family matters in Ontario since 1991.

[5]There is, in fact, some question as to whether it would be constitutionally possible to make recourse to such tribunals, at least as currently constituted, mandatory. Vesting mandatory jurisdiction might be seen to make them courts within the meaning of the constitution. If so, at least in respect of much jurisdiction relating to capacity and status, they would be governed by ss. 96-100 of the *Constitution Act, 1867*, the first provision of which requires that members be appointed by the Governor-General of Canada.

[6]For a detailed discussion see J.-F. Gaudreault-DesBiens, "The Limits of Private Justice" (2005) 16: 1 *World Arbitration and Mediation Report* 18. Of course, there is the further question whether a provincial *Arbitration Act* can automatically apply in respect of a federal statute, regardless of the subject matter of that statute. That is, it may be that authority to pronounce a divorce is reserved exclusively to courts, unless the Parliament of Canada provides otherwise.

[7]See the discussion of the role of State courts in assuring the conformity of arbitral proceedings and arbitral decisions with principles of public policy see F. Bachand, "Note" (2003) *Revue de l'arbitrage* 482. For a perspective on how State law and Sharia law might intersect in different contexts, see N. Bakht, "Family Arbitration Using Sharia Law" (2004) 1 *Muslim World J. of Hum. Rts.* 7.

[8]One should not assume either that Sharia law is as comprehensively expounded doctrinally as Canon law and Talmudic law (there being only about 500 of 6219 verses of the Koran that directly contemplate legal matters) or that there is consensus as to the interpretation of particular rules and principles of Sharia law. See the discussion in P. Fournier, "The Erasure of Islamic Difference in Canadian and American Family Law Adjudication" (2001) 51 *J. L. & Pol'y.* 67.

[9]Compare the perspectives of J.-F. Gaudreault-DesBiens, *supra*, note 5, at 19-20 who discusses the extent of review under s. 45 of the *Arbitration Act* absent an agreement as well as the types of agreement now being deployed in the attempt to limit judicial oversight of arbitral awards, with F. Bachand, *supra*, note 7, who takes a much more expansive view of the scope of public policy and a much less expansive view of the capacity of parties to contract out of judicial oversight.

10This is a complex question as it speaks not to what the text of legislation states in theory, but to how people act in practice. Even in ordinary courts there are gross differentials of access for women, immigrants, cultural minorities and the poor. On these points, see notably, R.A. Macdonald and Seana C. McGuire, "Small Claims Courts Cant" (1996) 34 *Osgoode Hall Law Journal* 509, and R.A. Macdonald, "Access to Justice in Canada Today: Scope, Scale Ambition" in J. Bass, *et al*, eds., *Access to Justice for a New Century: the Way Forward* (Toronto: Law Society of Upper Canada, 2005) 19. To measure the reality of the concern it would be necessary to compare the percentage of Muslim women who either go directly to State courts in family matters, or seek review of Sharia tribunal decisions in State courts, with the percentage of these women who invoke State courts, such as the Small Claims Court, in other matters.

[11]Both F. Bachand, *supra*, note 7, at 489-493 and J.-F. Gaudreault-DesBiens, *supra*, note 5, at 20-23 discuss what these principles are (or in the case of the latter, should be). They include adjudicative due process rules, guarantees of the independence and impartiality of judges, as well as principles reflecting the essentially contested nature of all textual interpretation: the requirement to give reasons, the publication and doctrinal assessment of decisions, and the possibilities of appeal and review.

[12]As this text was going to press, the Premier of Ontario, Dalton McGuinty, announced that the government would "ban sharia courts". While the exact scope of this *ukase* remains uncertain, one can assume that, at the very least, it means that section 37 of the Ontario *Arbitration Act* will be replaced with a provision like Article 2639 of the *Civil Code of Québec*. For a critical assessment of this development that evokes several themes discussed here, see Anver Elam, "A Mistake to Ban Sharia", an op-ed commentary published in *The Globe and Mail*, September 13, 2005.

[13]Luke 20: 25. Recall that the Preamble of the Canadian Charter *of Rights and Freedoms* states "Whereas Canada is founded upon principles that recognize the Supremacy of God and the Rule of Law..." — an assertion that compels us to recognize that neither God nor the Rule of Law are reducible to the other. See B. Polka, "The Supremacy of God and the Rule of Law in the Canadian Charter of Rights and Freedoms: A Theologico—Political Analysis" (1987) 32 *McGill Law Journal* 854.

Prominent Canadian businessman promotes human rights with $3-million gift to McGill, Prestigious O'Brien Fellowships will fund top young human rights scholars from around the world

Five fellowships will inaugurate a new era for human rights scholarship in Canada thanks to a generous donation by David O'Brien, a well-known executive who has given $3 million to the McGill Faculty of Law. The gift creates a permanent endowment that will be used each year to attract top young scholars to do graduate work in human rights at McGill.

David O'Brien (BCL'65) is the chairman of the Royal Bank of Canada and the head of Encana Corporation, the country's largest independent oil and gas company. His gift reflects what has become a priority in his life.

"I've been a businessman for a long time, but in the last few years, I've taken a growing interest in human rights and organizations that support them," says O'Brien. "I knew that first- and second-year law students at McGill do field work in human rights, and I wanted to find a way to encourage them to continue that work beyond the undergraduate level."

The O'Brien Fellowships will make this possible through a program that offers a generous amount each year to five young scholars from around the world who will come to McGill to focus on pressing issues of human rights law and policy. The O'Brien Fellows will also provide a pivotal source of energy and ideas for the newly created McGill Centre for Human Rights and Legal Pluralism, an interdisciplinary research group dedicated to studying legal and cultural issues related to human rights.

The O'Brien Fellowships will find a perfect home at the McGill Faculty of Law, whose scholars possess a unique perspective on multiple legal traditions, and whose bilingual students learn a rich mix of common, civil and international law. The Faculty is excited about the gift, and looks forward to welcoming the inaugural recipients, who will be announced early in 2006.

"We salute David O'Brien. His gift will attract some of the greatest young minds from around the world to this University and light up our faculty for years to come," says Dean of Law Nicholas Kasirer. "My expectation is that, in 20 years, there will be a network of O'Brien Fellows setting a new standard for human rights achievements in countries across the globe."

-- A.E.D. McGill L.S.A.

Presentation and Discussion

TRUST AND CHINA'S ENVIRONMENTAL CRISIS

Speaker: John Haffner
Date: Wed. October 5th
Time: 12h30

Room 101
New Chancellor Day Hall
Faculty of Law
McGill University
3644 Peel Street, Montreal

If China hopes to resolve its environmental crisis, the country will need to draw on a robust legal framework, a committed civil society, and effective forms of international collaboration.

John Haffner argues that, to enhance the capacity of those dimensions, China needs to cultivate a higher degree of trust at both interpersonal and institutional levels.

John Haffner, McGill Faculty of Law student, has worked in environmental policy and recently shared this paper at a Tokyo workshop of the *Harvard Project for Asian and International Relations*. He looks forward to receiving constructive feedback from the McGill community.

APLAM